

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Harry Feigen	Team: Squad #13	CCRB Case #: 201605007	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/04/2016 4:30 AM	Location of Incident: 2537 Valentine Avenue; 52nd Precinct stationhouse	Precinct: 52	18 Mo. SOL 12/4/2017	EO SOL 12/4/2017	
Date/Time CV Reported Fri, 06/10/2016 11:00 AM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 06/10/2016 11:00 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Doherty	12054	954743	052 PCT
2. An officer			052 PCT
3. POM Edmundo Rivera	696	955382	052 PCT
4. POM Joel Ayala	08262	954509	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Gabriel Herbert	00765	941893	052 PCT
2. SGT George Fristensky	02282	930187	052 PCT
3. POF Maria Imburgia	15286	954960	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Doherty	Abuse: At 2537 Valentine Avenue in the Bronx, PO Brian Doherty stopped § 87(2)(b)	
B.POM Edmundo Rivera	Abuse: At 2537 Valentine Avenue in the Bronx, PO Edmundo Rivera stopped § 87(2)(b)	
C.POM Joel Ayala	Abuse: At 2537 Valentine Avenue in the Bronx, PO Joel Ayala stopped § 87(2)(b)	
D.POM Edmundo Rivera	Force: At 2537 Valentine Avenue in the Bronx, PO Edmundo Rivera pointed his gun at § 87(2)(b)	
E.POM Brian Doherty	Force: At 2537 Valentine Avenue in the Bronx, PO Brian Doherty used physical force against § 87(2)(b)	
F.POM Edmundo Rivera	Force: At 2537 Valentine Avenue in the Bronx, PO Edmundo Rivera used physical force against § 87(2)(b)	
G.POM Joel Ayala	Force: At 2537 Valentine Avenue in the Bronx, PO Joel Ayala used physical force against § 87(2)(b)	
H.POM Brian Doherty	Force: At 2537 Valentine Avenue in the Bronx, PO Brian Doherty used physical force against § 87(2)(b)	
I.POM Edmundo Rivera	Force: At 2537 Valentine Avenue in the Bronx, PO Edmundo Rivera used physical force against § 87(2)(b)	
J.POM Joel Ayala	Force: At 2537 Valentine Avenue in the Bronx, PO Joel Ayala used physical force against § 87(2)(b)	
K.POM Joel Ayala	Abuse: At 2537 Valentine Avenue in the Bronx, PO Joel Ayala strip-searched § 87(2)(b)	
L.POM Edmundo Rivera	Abuse: At the 52nd Precinct stationhouse, PO Edmundo Rivera strip-searched § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
M. An officer	Abuse: At the 52nd Precinct stationhouse, an officer strip-searched § 87(2)(b)	

## Case Summary

On June 10, 2016, § 87(2)(b) filed this complaint with the CCRB in-person.

On June 4, 2016, at approximately 4:30 a.m., § 87(2)(b) was walking by himself on Valentine Avenue between East Fordham Road and East 192<sup>nd</sup> Street in the Bronx. He had been waiting in line outside of a Footlocker shoe store located at East Fordham Road and Valentine Avenue in anticipation of a sneaker that was being released later that morning, but had decided to leave the line to retrieve some items from his home, and then he would return to the Footlocker. As § 87(2)(b) was walking, a marked police vehicle carrying PO Brian Doherty, PO Edmundo Rivera, and PO Joel Ayala, all of the 52<sup>nd</sup> Precinct, pulled up next to § 87(2)(b). The officers asked § 87(2)(b) where he was going, and he told them he was walking home. The officers exited the vehicle and approached § 87(2)(b) and he turned and started walking south away from the officers (**Allegations A, B, and C**). PO Rivera pointed his gun at § 87(2)(b) and told him to get down on the ground (**Allegation D**). The officers grabbed § 87(2)(b)'s arms, tripped him onto the ground, and placed him in handcuffs (**Allegations E, F, and G**). The officers then kicked § 87(2)(b) approximately six times on his chest and feet (**Allegation H, I, and J**). PO Ayala patted § 87(2)(b) down and felt inside of his waistband, making direct physical contact with § 87(2)(b)'s genitals and also feeling between his buttocks (**Allegation K**). § 87(2)(b) did not have any ID, so the officers transported him to the 52<sup>nd</sup> Precinct stationhouse to verify his identity and issue him summonses for disorderly conduct. At the stationhouse, § 87(2)(b) was taken to a back room by PO Rivera, who also searched inside of § 87(2)(b)'s waistband, making contact with § 87(2)(b)'s genitals while doing so (**Allegation L**). § 87(2)(b) began struggling and yelling due to the manner in which PO Rivera was searching him. An unidentified female officer entered the room at that time and searched inside of § 87(2)(b)'s waistband in the same manner that PO Ayala and PO Rivera had done (**Allegation M**). Once the officers were done searching § 87(2)(b) he was issued two summonses for disorderly conduct (subsections “violent/threatening behavior,” “unreasonable noise”), and then released without further incident. § 87(2)(b) sustained scrapes to his elbows from being tripped onto the ground, but he did not ever obtain any medical treatment for these injuries.

## Mediation, Civil, and Criminal Histories

- This case was not suitable for mediation, due to § 87(2)(b)'s injuries.
- A notice of claim was submitted to the NYC Comptroller's office on September 12, 2016. On September 14, 2016, it was returned with negative results (01 Board Review).

• § 87(2)(b)

### Civilian and Officer CCRB Histories

- § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- PO Doherty has been a member of service for three years. In case 201510362, two stop allegations were substantiated against him. § 87(2)(g)  
[REDACTED]
- PO Rivera has been a member of service for three years. There are no substantiated allegations against him. § 87(2)(g)  
[REDACTED]
- PO Ayala has been a member of service for three years. There are no substantiated allegations against him. § 87(2)(g)  
[REDACTED]

### Findings and Recommendations

#### Explanation of Subject Officer Identification

§ 87(2)(b) described the second officer who searched him at the 52<sup>nd</sup> Precinct stationhouse as a 5'9" tall, 160-pound, 32-year-old white female with dark brown hair. According to the 52<sup>nd</sup> Precinct roll call from June 4, 2016, three female officers were working during the incident: PO Maria Imburgia, PO Geraldine Columna, and PO Jessica Romano (03 Board Review). PO Imburgia worked as the sergeant's operator, PO Columna was assigned to Sector C/D, and PO Romano was assigned to "Trainee with sergeant." All three officers generally match the description provided by § 87(2)(b) (04 Board Review, 05 Board Review, 06 Board Review). PO Imburgia was processing two arrests at the 52<sup>nd</sup> Precinct stationhouse at the time that § 87(2)(b) was present in the stationhouse, but PO Imburgia was interviewed at the CCRB and she did not recall this incident and denied the allegation (07 Board Review). All of the other officers interviewed for the case denied having any knowledge of a female officer searching § 87(2)(b) at the stationhouse, and could not confirm which female officers were present in the stationhouse at the time that the allegation would have occurred. Additionally, the command log from the date of the incident does not state that § 87(2)(b) was ever strip-searched. The investigation thus could not identify the officer who is the subject of **Allegation M**, and it is pleaded against "an officer."

#### Allegations Not Pleaded

It is undisputed that § 87(2)(b) did not have an ID on him during this incident, and the § 87(2)(b), § 87(2)(g) after being stopped by the officers. Given these facts, any frisk and search of § 87(2)(b)'s person at

2537 Valentine Avenue prior to transporting him to the 52<sup>nd</sup> Precinct stationhouse to verify his identity and issue him summonses for disorderly conduct would have been incident to a lawful arrest. Therefore, frisk and search allegations were not pleaded.

**Allegation A: Abuse of Authority – At 2537 Valentine Avenue in the Bronx, PO Brian Doherty stopped § 87(2)(b)**

**Allegation B: Abuse of Authority – At 2537 Valentine Avenue in the Bronx, PO Edmundo Rivera stopped § 87(2)(b)**

**Allegation C: Abuse of Authority – At 2537 Valentine Avenue in the Bronx, PO Joel Ayala stopped § 87(2)(b)**

§ 87(2)(b) stated he was walking north on Valentine Avenue by himself when a marked police vehicle drove past him. § 87(2)(b) was walking from the Footlocker shoe store located at the intersection of East Fordham Road and Valentine Avenue, where he had been waiting in line for a sneaker that was being released later that morning. § 87(2)(b) did not have any items in his pockets at that time except for \$240 in cash. § 87(2)(b) denied that he had committed any crimes or engaged in any other activities besides walking on the sidewalk towards his home. The police vehicle did a U-turn after it passed § 87(2)(b) and pulled up next to him. The driver of the vehicle, PO Doherty, asked § 87(2)(b) where he was going. § 87(2)(b) replied that he was walking home, and then all three officers in the vehicle exited the car and started walking towards § 87(2)(b). § 87(2)(b) turned around and walked to the front of 2537 Valentine Avenue, as there were several civilians standing at that location, and § 87(2)(b) felt he would be safer if witnesses were present (08 Board Review).

PO Doherty (09 Board Review), PO Ayala (10 Board Review), and PO Rivera (11 Board Review) all stated that they observed § 87(2)(b) walking by himself on Valentine Avenue, and that when § 87(2)(b) saw the officers' vehicle, he turned around, and started running while holding the front of his waistband. None of the officers observed any objects or outlines of any objects in § 87(2)(b)'s waistband, and none of the officers made any other observations about § 87(2)(b)'s behavior or appearance that led them to stop him besides the fact that he ran away from them, and held his waistband as he ran. None of the officers could say whether § 87(2)(b)'s hand entered his front waistband as he fled, or whether he just held it from the exterior. None of the officers said anything to § 87(2)(b) before he turned and ran. The officers were not responding to any specific reports of criminal activity or patterns in that area when the observed § 87(2)(b) they were conducting a routine patrol. PO Doherty stated that robberies are common in a park near that block, and § 87(2)(b)'s proximity to the park added to his suspicion of him. PO Ayala stated generally that robberies, burglaries, and homicides are common on that block and in the surrounding blocks, and this increased his level of suspicion

of § 87(2)(b) However, there were no specific crimes that the officers believed § 87(2)(b) was linked to at the time that he fled from them.

The officers differed slightly in their accounts of their observations of § 87(2)(b) prior to his flight from them. PO Rivera stated that the officers were driving on a street perpendicular to Valentine Avenue (he could not recall which one), and as they approached the T-intersection between that street and Valentine Avenue, they observed § 87(2)(b) walking on Valentine Avenue. The officers were approximately one car-length from § 87(2)(b) when they first observed him. § 87(2)(b) then noticed the officers' vehicle, turned, and fled the opposite direction down Valentine Avenue.

PO Doherty stated that the officers were driving on Valentine Avenue in the same direction as § 87(2)(b) and were driving next to him and observing § 87(2)(b) for approximately one to two minutes before § 87(2)(b) turned and fled from the officers.

PO Ayala stated that the officers were driving in the opposite direction of § 87(2)(b) at approximately ten to fifteen miles per hour when they first observed § 87(2)(b) was approximately ten to twenty feet from the officers when they first observed him, and he immediately turned and fled upon observing the officers' vehicle.

The lighting conditions on Valentine Avenue during the incident are also in dispute. PO Rivera and PO Doherty stated that there were street lamps on the section of street that § 87(2)(b) was walking on; PO Ayala stated there were no street lamps and the street was poorly-lit. A search of the section of the street on Googlemaps (12 Board Review) shows that there are no street lamps on the side of Valentine Avenue that § 87(2)(b) was walking on. § 87(2)(b), § 87(2)(g)

It is undisputed that no weapon or contraband was ever recovered from § 87(2)(b) or from the scene near where he was apprehended. PO Ayala denied that the officers ever canvassed the scene for a discarded weapon or contraband. PO Rivera, PO Doherty, and § 87(2)(b) were not asked directly about whether the officers made any attempts to search the area for a discarded weapon, but none of them mentioned officers doing so in any of their statements. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

An officer needs reasonable suspicion that a person has committed or is about to commit a crime in order to detain that person. A person grabbing his waistband in a high-crime area upon noticing the presence of police officers, and then running away from the officers, does not grant the officers reasonable suspicion, even if there is a bulge underneath the person's clothes. People v. Haynes, 2014 NY Slip Op 1462 (2<sup>nd</sup> Dept. 2014) (13 Board Review).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation D: Force – At 2537 Valentine Avenue in the Bronx, PO Edmundo Rivera pointed his gun at** § 87(2)(b)

§ 87(2)(b) alleged that as the officers approached him in front of 2537 Valentine Avenue, PO Rivera pointed his gun at § 87(2)(b) and told him to get down on the ground. § 87(2)(b) held his arms out in front of him in response, and PO Doherty and PO Ayala approached § 87(2)(b) and grabbed his arms.

PO Rivera, PO Doherty, and PO Ayala all denied that PO Rivera pointed his gun at § 87(2)(b) as the officers initially approached him, or that PO Rivera removed his gun from his holster at any time during this incident.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation E: Force – At 2537 Valentine Avenue in the Bronx, PO Brian Doherty used physical force against § 87(2)(b)**

**Allegation F: Force – At 2537 Valentine Avenue in the Bronx, PO Edmundo Rivera used physical force against § 87(2)(b)**

**Allegation G: Force – At 2537 Valentine Avenue in the Bronx, PO Joel Ayala used physical force against § 87(2)(b)**

§ 87(2)(b) stated that as the three officers approached him in front of 2537 Valentine Avenue, he stopped walking and held his arms out in front of his body for the officers to see that he was not resisting them. PO Doherty and PO Ayala then grabbed § 87(2)(b)'s arms and tripped him onto the ground, where they placed him in handcuffs. § 87(2)(b) sustained scrapes to his elbows when he was tripped onto the ground. § 87(2)(b) had scrapes on both of his elbows when he was interviewed at the CCRB on June 10, 2016, and photographs were taken on that date to document this (14 Board Review).

PO Rivera stated that as he and PO Doherty approached § 87(2)(b) in the courtyard in front of 2537 Valentine Avenue, § 87(2)(b) was holding both of his hands inside of his pants waistband, and was moving back and forth across the courtyard. PO Doherty stated that when the officers entered the courtyard, § 87(2)(b) was standing with the front of his body pressed against a wall, with his arms crossed in front of his waist. PO Ayala stated that when the officers entered the courtyard, § 87(2)(b) squared his body towards them, clenched his fists in a “fighting stance,” and told the officers, “I’ll fuck you guys up.”

The officers all stated that they approached § 87(2)(b) and grabbed his arms to place him in handcuffs. § 87(2)(b) resisted by stiffening his arms and twisting his body. PO Rivera additionally stated that § 87(2)(b) was kicking his legs; PO Doherty stated that § 87(2)(b) was throwing elbows at the officers; and PO Ayala stated that § 87(2)(b) was attempting to drop to the ground. All of the officers stated that they were able to pull § 87(2)(b)'s arms behind his back and place him in handcuffs, and denied that they had to bring him to the ground to do this, or that they used any other force to restrain him.

§ 87(2)(b), § 87(2)(g)



According to Patrol Guide Procedure 221-02, officers may use reasonable force to gain control of a resisting individual (15 Board Review).

§ 87(2)(b), § 87(2)(g)

**Allegation H: Force – At 2537 Valentine Avenue in the Bronx, PO Brian Doherty used physical force against § 87(2)(b)**

**Allegation I: Force – At 2537 Valentine Avenue in the Bronx, PO Edmundo Rivera used physical force against § 87(2)(b)**

**Allegation J: Force – At 2537 Valentine Avenue in the Bronx, PO Joel Ayala used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that once he was taken to the ground and handcuffed, he was kicked approximately six times in his chest and his feet. § 87(2)(b) could not see which officer or officers did this. § 87(2)(b) denied that he was moving his body or resisting prior to being kicked. He sustained a small bruise to his chest from being kicked.

PO Rivera and PO Doherty stated that the officers placed § 87(2)(b) on the ground after he was handcuffed because he was still twisting his body and moving around, and the officers did not want him to try to run away. Once on the ground, § 87(2)(b) continued to kick his legs, but PO Rivera did not recall using any other force against § 87(2)(b) at that time, and he denied kicking § 87(2)(b) or seeing any other officer do this. PO Doherty denied that the officers kicked § 87(2)(b) once he was on the ground, or that they used any physical force to restrain him once he was on the ground. PO Ayala denied that the officers ever placed § 87(2)(b) on the ground, and he denied that he himself or any other officer ever kicked § 87(2)(b) during the incident.

§ 87(2)(b), § 87(2)(g)

**Allegation K: Abuse of Authority – At 2537 Valentine Avenue in the Bronx, PO Joel Ayala strip-searched § 87(2)(b)**

§ 87(2)(b) alleged that after he was handcuffed and stood up, PO Ayala frisked § 87(2)(b) and then reached inside the front of § 87(2)(b)'s waistband and felt around, making direct contact with § 87(2)(b)'s genitals as he did so. PO Ayala then reached inside the back of § 87(2)(b)'s waistband, and felt around between § 87(2)(b)'s buttocks. § 87(2)(b) tensed his body and asked PO Ayala why he was touching him inappropriately, and PO Ayala stopped searching § 87(2)(b).

All of the officers stated that § 87(2)(b) was frisked before they transported him to the 52<sup>nd</sup> Precinct stationhouse, but none could recall which officer performed this frisk. PO Ayala could not recall whether § 87(2)(b) was searched any further at that time, PO Doherty denied that § 87(2)(b) was searched further, and PO Rivera was inconsistent in his statement as to whether § 87(2)(b) was searched further. All of the officers denied that PO Ayala searched inside of § 87(2)(b)'s waistband as he alleged.

§ 87(2)(b), § 87(2)(g)  
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**Allegation L: Abuse of Authority – At the 52<sup>nd</sup> Precinct stationhouse, PO Edmundo Rivera strip-searched § 87(2)(b)**

§ 87(2)(b) stated that after he was brought to the 52<sup>nd</sup> Precinct stationhouse and brought before the front desk, PO Rivera brought § 87(2)(b) into a private room in the rear of the stationhouse and frisked § 87(2)(b) again. PO Rivera then reached inside the front of § 87(2)(b)'s waistband and felt around § 87(2)(b)'s groin area, making contact with his genitals. PO Rivera then reached inside of the back of § 87(2)(b)'s pants and felt around between his buttocks.

PO Rivera stated that § 87(2)(b) was frisked, and his pockets were searched in front of the front desk at the stationhouse. He could not recall which officer performed this frisk and search. PO Rivera denied that § 87(2)(b) was ever brought to a private room for a further search, and he denied searching inside of § 87(2)(b)'s pants waistband as alleged. PO

Doherty and PO Ayala both stated that § 87(2)(b) was searched at the front desk at the stationhouse, but neither officer knew which officer conducted this search, and both denied that § 87(2)(b) was brought to a room for a further search by PO Rivera, or that any sort of strip-search of § 87(2)(b) was conducted at the stationhouse.

According to the command log (16 Board Review) and roll call, Sgt. Gabriel Herbert was working as the desk sergeant when § 87(2)(b) was brought into the 52<sup>nd</sup> Precinct stationhouse. Sgt. Herbert stated that Sgt. George Fristensky took over the front desk when § 87(2)(b) was brought into the stationhouse. Sgt. Herbert denied having any knowledge of the details of § 87(2)(b)'s arrest, and he did not hear any officers discussing whether to conduct a strip-search of § 87(2)(b) nor did he ever learn of a strip-search of § 87(2)(b) being conducted in the stationhouse (17 Board Review). Sgt. Fristensky did not recall this incident, and he denied taking over as the desk sergeant during his tour as Sgt. Herbert stated. Sgt. Fristensky did not have any recollection of officers strip-searching § 87(2)(b) at the stationhouse (18 Board Review). No documentation of a strip-search was ever prepared for § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

**Allegation M: Abuse of Authority – At the 52<sup>nd</sup> Precinct stationhouse, an officer strip-searched § 87(2)(b)**

As discussed in the officer identification section, the investigation could not determine who the subject of this allegation was. § 87(2)(b), § 87(2)(g)

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Squad: 13

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date